

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

DONALD C. HUTCHINS,)	Civil Action 04-30126-MAP
)	
Plaintiff,)	Judge Michael A. Ponsor
)	
v.)	
)	
CARDIAC SCIENCE, INC., et al.,)	
)	
Defendants.)	

**MEMORANDUM IN OPPOSITION TO
PLAINTIFF’S MOTION FOR DECLARATORY JUDGMENT**

Defendant, Compliant Corporation (“Compliant”), respectfully requests that Plaintiff’s “Motion for Declaratory Judgment Asserting Plaintiff’s Conduct in Filing the Complaint Does Not Constitute Tortious Interference” (the “Motion”) be denied. Plaintiff Donald C. Hutchins (“Hutchins”) Motion should be denied because it is procedurally improper, moot and wholly without merit.

Hutchins’ Motion is a poorly disguised effort to, yet again, request summary judgment on Compliant’s Counterclaim for tortious interference with contract. In addition to the fact that this Court already denied Hutchins’ Motion for Summary Judgment asserting substantially similar arguments, an Ohio Court found Hutchins liable for tortious interference for the facts alleged in Compliant’s Counterclaim. Further, Compliant recently filed a Motion to Dismiss Without Prejudice in this case, seeking permission of the Court to dismiss this very claim. Based on the

decision of the Ohio Court and Compliant's Motion to Dismiss Without Prejudice, Hutchins' Motion is moot.

Hutchins' Motion is procedurally improper; it is yet another poorly disguised request to this Court to reconsider its denial of Hutchins' Motion for Summary Judgment on Compliant's Counterclaim; and it is moot, given the Ohio judgment and Compliant's Motion to Dismiss Without Prejudice. Accordingly, Compliant respectfully requests that Hutchins' Motion for Declaratory Judgment be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that, on October 20, 2006 I electronically filed a copy of the foregoing Memorandum in Opposition to Plaintiff's Motion for Declaratory Judgment and that parties to the case, registered with the Court's electronic filing system, will receive electronic notice of such filing. A copy of the foregoing was also served upon the following via first-class U.S. mail on today's date:

Donald C. Hutchins
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Pro Se

/s/ Colleen M. O'Neil
One of the Attorneys for Defendant,
Compliant Corporation